STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED January 13, 2011
v	No. 294424 Saginaw Circuit Court
JOHN EDWARD CYBOROWSKI, JR., Defendant-Appellee.	LC No. 09-032088-FH

Before: MARKEY, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

The prosecution appeals by right the dismissal of three counts of operating while intoxicated with an occupant less than 16 years old, MCL 257.625(7)(a)(ii), second or subsequent offense, and operating while intoxicated, third offense, MCL 257.625(8). The trial court granted defendant's motion to dismiss, which alleged a violation of the 180-day rule of MCL 780.131. We reverse and remand.

On August 26, 2008, an arrest warrant was issued charging defendant with the dismissed offenses. Defendant was arraigned on December 16, 2008. Defendant waived his right to a preliminary examination and was bound over to the circuit court. Defendant was arraigned and entered a not guilty plea in circuit court on February 23, 2009. Trial was set for August 11, 2009. Subsequently, Judge Darnell Jackson recused himself from the case, and Judge William A. Crane was assigned to preside over defendant's case. Trial was reset for August 27, 2009. Defendant moved to dismiss on August 25, 2009 arguing that the 180-day rule had been violated. At the hearing on the motion, the trial court granted the motion on the grounds that the prosecution's attempt to pursue charges against defendant violated the 180-day rule. The order of dismissal was filed September 23, 2009.

A criminal defendant is entitled to be brought to trial within 180 days after the department of corrections sends notice to the prosecution that the defendant has been incarcerated. MCL 780.131(1) states:

> Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth

> against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. The written notice and statement shall be delivered by certified mail.

This rule is consistent with MCR 6.004(D), which also requires a defendant to be brought to trial within 180 days. The failure to bring an incarcerated defendant to trial within the requisite 180-day period divests the court of jurisdiction and requires dismissal of the charge. MCL 780.133; MCR 6.004(D)(2); *People v Williams*, 475 Mich 245, 252; 716 NW2d 208 (2006). The 180-day period commences the day after the prosecutor receives notice that the defendant is incarcerated and awaiting trial on pending charges. *Williams*, 475 Mich at 256-257 n 4. The requirement that a defendant be brought to trial within 180 days of notice does not mandate that trial be commenced so as to be completed within the 180-day period, provided the prosecution makes good-faith efforts to ready the case for trial within that period. *People v Hendershot*, 357 Mich 300, 303-304; 98 NW2d 568 (1959); *People v Davis*, 283 Mich App 737, 741-742; 769 NW2d 278 (2009).

In this case, the department of corrections never sent written notice to the prosecuting attorney indicating that defendant was incarcerated. In *Williams*, 475 Mich at 256 n 4, our Supreme Court stated, "the 180-day rule begins to run the day after the prosecutor receives notice that a defendant is incarcerated and awaiting trial on pending charges." In *People v Holt*, 478 Mich 851; 731 NW2d 93 (2007), the Court held the 180-day rule was not violated "because the defendant did not establish that the Department of Corrections caused to be delivered by certified mail to the prosecuting attorney the written notice, request, and statement as required by MCL 780.131(1)." Based on *Williams* and *Holt*, we conclude that the 180-day period never commenced because plaintiff never received notice from the department of corrections. Therefore, the trial court erred by granting defendant's motion to dismiss.

Additionally, we note that defendant's argument that the notice requirements under MCL 780.131 were substantially complied with is without merit. Our Supreme Court in *Williams* expressly overruled *People v Hill*, 402 Mich 272; 262 NW2d 641 (1978), and *People v Castelli*, 370 Mich 147; 121 NW2d 438 (1963), which allowed for the notice requirement to be satisfied when the department of corrections knew, or had reason to know, that a criminal charge was pending against a criminal defendant.

We reverse the order of dismissal and remand for further proceedings. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Pat M. Donofrio